

E-Filed 10/14/05

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CENTER FOR BIOLOGICAL DIVERSITY, et al.,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT, et al.,

Defendants.

Case Number C 04-4736 JF

ORDER¹ DIRECTING PARTIES TO
MEET AND CONFER WITH
RESPECT TO INTERIM RELIEF

Plaintiffs Center for Biological Diversity and California Native Plant Society filed a complaint on November 9, 2004, alleging two claims against Defendants Bureau of Land Management (“BLM”) and Mike Pool, State Director of the Bureau of Land Management for California. On March 28, 2005, Plaintiffs filed a motion for summary judgment. On April 29, 2005, Defendants filed a cross-motion for summary judgment. On July 15, 2005, the Court issued an order, deferring ruling on the motions for summary judgment until after the United States Fish and Wildlife Service (“FWS”) issued an anticipated Biological Opinion. On September 2, 2005, FWS issued a Biological Opinion (“2005 BO”) evaluating the effect of

¹ This disposition is not designated for publication and may not be cited.

1 BLM's management of Clear Creak Management Area ("CCMA") on the San Benito Evening-
2 Primrose ("evening-primrose"). Plaintiffs and Defendants subsequently filed supplemental briefs
3 discussing the impact of the new 2005 BO on the pending motions for summary judgment. On
4 September 16, 2005, Plaintiffs filed a motion for leave to file a supplemental complaint that
5 raises certain objections to the 2005 BO.

6 On October 4, 2005, the Court issued an order dismissing Plaintiffs' first claim as moot,
7 deferring determination of Plaintiffs' second claim because the claim is not yet ripe, and granting
8 Plaintiffs' motion for leave to file a supplemental complaint. The Court is not yet in a position to
9 make a final determination of Plaintiffs' claims. However, the Court has advised the parties of
10 its view that interim relief may be necessary to preserve the habitat of the evening-primrose
11 during the pendency of the instant proceedings, as the current temporary closure of portions of
12 the CCMA will expire on October 15, 2005.

13 In its October 4, 2005 order, the Court indicated its intention to issue a limited injunction
14 if the parties are unable to reach mutual agreement as to the precise nature of such interim relief.
15 The parties have advised the Court that they have not been able to reach such an agreement to
16 date. On October 13, 2005, Defendants filed a supplemental brief responding to Plaintiffs'
17 declarations and opposing any interim relief. On the same date Plaintiffs filed a status report
18 advising the Court of the status of discussions between the parties regarding interim relief and
19 requesting an extension of the temporary closure of the CCMA or a limited injunction with
20 specific restrictions.

21 Because fairness dictates that it consider the new arguments presented by BLM, and
22 based on BLM's representations that BLM currently is complying with the requirements of the
23 1997 BO, the Court is satisfied that the evening-primrose will not suffer irreparable harm if the
24 Court does not issue a limited injunction immediately. Accordingly, the Court will direct the
25 parties to meet and confer under the supervision of Magistrate Judge Seeborg to discuss a
26 mutually agreeable form of interim relief. In the event that the parties do not reach agreement,
27 the Court will issue a reasoned order granting or denying interim relief on October 28, 2005.

1 IT IS SO ORDERED.

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5 DATED: October 14, 2005
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8 /s/ electronic signature authorized
9 JEREMY FOGEL
10 United States District Judge
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1 This Order has been served upon the following persons:

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